

FINANCE COMMITTEE SUPPLEMENTAL REPORT AND RECOMMENDATIONS FOR THE 2013 TOWN MEETING

Finance Committee consideration of zoning articles

The Finance Committee has used the zoning articles that were before Town Meeting in the last two years to more carefully consider when a proposed change in the zoning bylaw will have a financial impact on the Town. Zoning is primarily about planning. There are three reasons a proposed change in a zoning bylaw might have financial implications:

- (1)A zoning change might encourage development that would generate additional net revenue. This analysis does not permit exact determination because zoning changes are almost never to facilitate a specific development that is financed and will be built if the zoning is changed. The committee compares the current tax revenue generated and what might be generated, and the likely costs for public services including educating children who might live in an area if developed. But these calculations are just estimates because we don't know what will be built and, if it is partly residential, who will live there and what services they will require.
- (2) Some zoning changes are designed to clarify the bylaw or make its administration more efficient. There is a financial benefit to reducing the staff and board time required to administer the zoning bylaw.
- (3) Similarly, the Planning Board proposes changes to the bylaw to clarify it and reduce the risk of litigation, which is an expense to the Town.

ARTICLES 31, 32 and 35

RECOMMENDED by Finance Committee vote of 6-0, with 1 member absent.

The Planning Board explains that these articles "propose to adjust regulations for mixed use buildings and dimensions in the town's existing mixed-use center districts." The Articles are fully explained in the Planning Board reports. The intent of all three Articles is to encourage a wider mix of uses including residential and to make the mixed use centers more viable. The goal, consistent with the master plan, is to encourage the development of vibrant village centers. Boltwood Place is an example of a mixed use building that meets the first of the criteria identified as a financial benefit to the Town. There are few other examples, if any.

Article 31 would provide additional flexibility and options for design and development and encourage better use of the limited land available in the designated areas. In addition to encouraging new development which would generate additional property tax, development might create opportunities for grant funds that the state would then make available for other improvements. By modifying dimensional specifications, Article 32 would have a similar benefit. Article 35 addresses this goal by requiring pedestrian friendly and attractive village centers that are not focused on automobile access and parking.

Because of the areas affected, the land generally available in those areas to develop, and the requirement that business is an element to mixed use, it is unlikely that large, multi-unit residential construction will result from these changes. The committee therefore concluded that these changes will encourage development that will have a positive net financial impact.

ARTICLE 33, Non-conforming Uses and Structures

RECOMMENDED BY Finance Committee vote 5-0, 1 abstaining, with 1 member absent.

This Article addresses problems identified by the Building Commissioner and Planning Department staff. There are several problems of interpretation surrounding the permitting of non-conforming structures, particularly in mixed use business districts. The Planning Board report outlines four problems and the proposed solution to each one.

The Finance Committee recommends this Article because these changes are designed to clarify the bylaw and make its administration more efficient, saving staff and board time required to administer the zoning bylaw, and to decrease the risk of litigation. One member did not find sufficient information available to support this conclusion, and so abstained.

ARTICLE 34, Fraternity Residence Dimensions

RECOMMENDED BY Finance Committee vote 5-0, 1 abstaining, with 1 member absent.

This Article proposes to expand the flexibility of building dimensions of the Fraternity Residence (R-F) District, which only exists in two small places. This could encourage new private student housing in appropriate locations.

The Finance Committee recommends this Article because these changes are designed to facilitate development that is less likely to occur without the changes. Any housing that would be developed as a result would not be large but would generate some additional tax revenue without a likely increase in expenses for services. One member did not find sufficient information available to support this conclusion.

ARTICLE 40, Petition – Rental Housing Information

NOT RECOMMENDED by Finance Committee vote of 6-0, with 1 member absent.

This petition article would amend the General Bylaws to specify how information about rental housing laws and regulations is provided to tenants. Part a would require placement of a specific pamphlet and other information on the Town web site. Part b would require that the Town annually mail a brief summary, referring to the web site for additional information, to every landlord, rental property management company, and tenant household. Part c would require that the Town Manager attempt to persuade the University of Massachusetts to e-mail the notice created to comply with Part b of the bylaw to every student living off-campus every Saturday.

Section 8 of the Residential Rental Property Bylaw that was adopted by Town Meeting on May 20 (Article 29) requires that owners provide information as specified by the Town that is similar to what is described in Section b of this article to tenants. These additional requirements are unnecessary and would require expenditure of staff time and funds for printing and mailing. Also, technology to make information public and to communicate will evolve, while bylaws remain.

ARTICLE 42, Petition – Affordability Restriction Echo Hill Apartments

NOT RECOMMENDED by Finance Committee vote of 6-0 with 1 member absent.

This article was filed by a citizens group in reaction to the sale of Echo Hill Apartments. The previous owner accepted Section 8 certificates. These certificates are provided to tenants who qualify based on income and reimburse the landlord for part of the rent. The landlord has to agree to limit the rent charged for the apartment to an amount determined by the program. The new owner has indicated that he will not accept the Section 8 rent limits and has begun eviction proceedings of the tenants participating in that program.

Article 42 would authorize the Town to purchase the building or an affordability restriction including by eminent domain, to use town funds to pay for 15% of the cost, to borrow funds for that purpose, to seek grants or similar funds for the other 85%, and to authorize the sale or transfer of the building to the Housing Authority or another party to manage it as low income housing. The petitioners advise that they will seek Community Preservation Act funds to pay the Town share, but that committee has not been presented with a proposal because the information about the sale and intended termination of Section 8 participation was announced after CPAC process for this Town Meeting was substantially concluded.

There is no reason to assume that the current owner would agree to sell the property or a restriction on the rental or the property. In an eminent domain proceeding, the value would be determined by a Court if there is no agreement. There are legal costs to eminent domain and the risk that a court would place a higher value on the land than the Town could afford, exposing the Town to an unknown liability.

If the Community Preservation Act Committee does not recommend this project or it is not approved after recommendation in a future Town Meeting, this Town Meeting will have authorized the expenditure of \$450,000 of general revenues. With the substantial operating budget and capital needs projected for future years and projected annual revenue growth of 2.7%, it would not be wise to appropriate these funds, which is effectively what would happen with this resolution.

Petitioners have said that this action by Town Meeting would communicate that the Town is serious about the proposal to the owner and potential grantors. Projects of this type have always reached town meeting after substantial work by appropriate boards, committees, and staff, and outreach to grant and other funding sources. Town staff is actively working to achieve the petitioners' goals and there is support from the Select Board and Housing and Sheltering Committee. There is no reason to adopt a different procedure in this circumstance. Town Meeting should not grant this authority to the Select Board to pursue eminent domain and expend \$450,000. That authority would remain in effect for this and future Select Boards. Town Meeting should reserve the authorization of this authority until there is a more specific plan and not do so in such an open-ended manner as proposed by this Article. The committee is not opposed to the idea of spending CPAC funds on this type of project and would consider whether such an expenditure from general funds is an appropriate expenditure, but there should be a more specific proposal.

The Assessor provided the Finance Committee with information about taxes currently paid and future revenue if purchased and transferred to the Housing Authority or a nonprofit housing organization. There are too many variables that depend upon what is purchased, the future ownership, and restrictions to make a report on future revenue possible. The expense for Police, Fire, and other Town services, and for schools if any school-aged children were to live on the premises, would probably be similar to what is currently required.

ARTICLE 43, Petition – Purchase Conservation Restriction Parcels 84, 91 & 96 of Map 5A

NOT RECOMMENDED by Finance Committee vote of 6-0, 1 abstaining.

This article was filed by a citizens group that is concerned about the proposal of a private company to build housing that would be marketed as student rentals on a tract in the Cushman area. They have identified issues regarding the effect on the surrounding neighborhood, traffic, and the environment. The land is currently owned by the W. D. Cowls Company and used for logging, which has kept it from other development. The Cowls Company announced its intention to sell the land for this development shortly before the deadline for petition articles for this Annual Town Meeting.

The Article would authorize the Town to purchase a conservation restriction on this parcel, to borrow funds for that purpose, and to seek grants. The language is essentially the same as has been used in Warrant Articles before other Town Meetings that authorized the purchase of land or restrictions for conservation purposes. The committee recommendation is not a reflection on the concern about the proposed development. This type of acquisition has always been a result of careful planning and has been developed by town staff through a rigorous process that has included review by the Conservation Commission and other boards and committees, negotiation with the land owner, appraisal and financial analysis, and the identification of likely grant support. These Warrant Articles are the culmination of a process, not the beginning of that process.

The Article specifies an amount, \$1.2 million, for the purchase of a conservation restriction that is based upon the price for a similar restriction in another town. That amount is not realistic for land that is in Amherst, accessible to roads and utilities, and proximate to the University. The reported sale price for the land is \$6.5 million. It is not realistic to assume that the current owner would agree to sell a restriction on the development of this property for the amount specified in the Article or that an appraisal would place that value on a restriction for an eminent domain proceeding. The Town has not purchased property by eminent domain in any recent year, and then only after negotiation with the seller about the value. There are legal costs to eminent domain and the risk that a court would place a higher value on the land than the Town could afford.

The Assessor advised the Finance Committee that if fully developed as proposed, this land could generate annual tax revenue of \$395,182. Currently the annual tax on this land is \$126.42 because it has a Chapter 61 restriction. In order to sell the land, W. D. Cowls would need to remove the land from Chapter 61 and make a one-time payment of the property taxes that were previously forgiven, an amount based on undeveloped land. There would be some expense for Police, Fire, and other town services and there could be some school-aged children living on the premises. These costs cannot be accurately determined but would likely be less than the tax revenue that would be generated. The analysis of tax revenue and public service expense is secondary to the committee's concern about the cost to pursue and possibly finance this acquisition.

This motion would authorize the Select Board to act but not require it to do so. Town Meeting should not authorize action that is neither feasible nor financially advisable, and it would not be a good use of town resources to pursue this further.